IN THE MATTER OF ARBITRATION BETWEEN

HONEYWELL INTERNATIONAL	)	
"Employer"	)	
	)	FMCS Case No.
AND	)	060517-56312-7
	)	Denise Glass
IBT LOCAL NO. 1145	)	Discharge
"Union"	)	

NAME OF ARBITRATOR: John J. Flagler

DATE AND PLACE OF HEARING: December 4, 2006; Minneapolis, MN

DATE OF RECEIPT OF POST-HEARING BRIEFS: January 8, 2007

APPEARANCES

FOR THE EMPLOYER: Chuck Bengtson, Labor Relations Manager
Honeywell International
2600 Ridgeway Parkway, MN17-3100
Minneapolis, MN 55413

FOR THE UNION: Martin J. Costello, Attorney
1230 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102
Denise Glass, Grievant

THE ISSUE

Was the discharge of Denise Glass for just cause?

If not, what should be the remedy?

FACTS

Honeywell International, Inc. (the "Company" or "Employer") is a diversified technology and manufacturing corporation, serving customers worldwide with aerospace products and services; control technologies for buildings; automotive products; turbochargers; and specialty materials.

The Company is divided into different geographic operations areas. These areas function as relatively independent units. One of these is the Minneapolis Operations area. This area has over 1,700 union employees in Minneapolis and surrounding suburbs. These production employees are members of the International Brotherhood of Teamsters, Local No. 1145 (the "Union" or "Teamsters").

Grievant is an African-American single mother, with three children, one stepchild, and five grandchildren. She has been employed as an assembly-line worker at Honeywell since September 7, 1999, working most recently at the Stinson plant. She has had no relevant discipline. Her performance evaluations have been uniformly good in the area of getting along with her co-workers.

The Employer and Union are subject to a Collective Bargaining Agreement effective February 1, 2002 through January 31, 2007. The Agreement prescribes the terms and conditions of employment for the unionized workforce. Article XIX of the CBA contains the discharge provisions of the Agreement:

> The Company shall have the exclusive right to discipline, suspend, or discharge employees for just cause. In case of a discharge reasonable notice shall be given to the departmental committee member prior to the discharge

Article XV of the CBA contains the grievance and arbitration provisions of the Agreement:

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> The authority of the Arbitrator shall be limited solely to the determination of the questions as submitted in Step 3, provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein.
>
> The Arbitrator shall have no power to add to, or subtract from, or modify, any of the terms of this Agreement, or any agreement made supplementary hereto.
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> The Company and the Union shall set the time and place of hearing. Hearing dates will be subject to the approval of the Arbitrator. The Arbitrator's decision shall be final and binding upon the Company, the Union and employees within the bargaining unit. The expense and fees of the Arbitrator shall be borne jointly by the Company and the Union.

Company Rules, Policies, and Procedures

Honeywell's Code of Conduct states:

> The Company prohibits all forms of harassment of employees by fellow employees, employees of outside contractors or visitors. This includes any demeaning, insulting, embarrassing or intimidating behavior directed at any employee related to gender, race, ethnicity, sexual orientation, physical or mental disability, age, pregnancy, religion, veteran status, national origin or any other legally protected status.

Honeywell also has a Harassment Policy, which states:

> At Honeywell, we believe that our employees should be treated with respect and dignity. Therefore, we will not tolerate inappropriate workplace conduct, including discriminatory harassment based on race, color, gender, age, citizenship or impending citizenship, religion, national origin, affectional or sexual orientation, disability, marital status, veteran status or any other characteristic protected by law.

Honeywell's disciplinary structure is a set of rule-based "demerits." Demerits are the equivalent of points, with various listed offenses designated as a first, second, third, or fourth demerit. Deliberate promotion of discord or unrest, committing an act of violence, and giving false testimony are all deemed fourth demerit offenses. First and second demerits result in a written notation in the employee's personnel file; a third demerit results in disciplinary layoff of two to 10 days; and a fourth demerit results in termination. Issued demerits are cumulative, such that if an employee has two second-degree demerit offenses, discipline is imposed at the fourth demerit level. This disciplinary system was put in place by the Employer and was never negotiated with or agreed to by the Union.

On March 6, 2006, Grievant was working her normal second shift. One of her co-workers, Nell Hooker, who is also African-American, brought her cell phone to Grievant's workstation and showed her a text message that Hooker had received. It read, "In honor of Black History Month, slap the next five white people you see." Grievant then walked around her work area, lightly tapping five female coworkers on their faces and counting out the numbers one through seven. The initial reaction to the incident varied from coworker to coworker.

Sandy Dignan was not personally involved in the incident, but witnessed a portion of it and was one of the employees reporting the incident. Dignan reported seeing Grievant slap Chelsea Nygard and Priscilla Bias, saying a number each time. Dignan would have been the next in line, but Grievant only looked at her and moved on.

Dianne Miller reported that Hooker approached her, "tapped" her on the cheek, and said, "You're Number One." Hooker apparently sent the text message to Grievant, shouting to her, "Did you get the text message?" Grievant then approached Miller, and slapped her on the cheek, saying "Number Two." Miller noted she took no offense from the incident. She called the slap "a little one," and described it as "not hard."

Nancy Sjodin reported that Grievant tapped her on the cheek, saying "Number Four," and then tapped Priscilla Bias on the cheek saying, "Number Five." Sjodin followed Grievant, asking what was going on, and if they were playing a "game."

Chelsea Nygard reported hearing Hooker say to Grievant, "Did you get the text message?" Grievant said she did, and then approached Nygard and tapped her face, saying "Number Three." Nygard then watched Grievant tap Sjodin's and Bias' faces, saying "Number Four" and "Number Five," respectively. Sjodin yelled to Grievant, "What was that about?"

Arlene Yarke said Grievant approached her and tapped her on the cheek without saying anything.

Bias reported that Grievant had "brushed her on the cheek," giggles, but did not say anything. Bias also said she did not take offense from the incident. At the hearing, Bias described the incident as a "light brush of the cheek."

The next day, March 7th, Union Steward Mike Maruska called Hooker and Grievant aside and informed them of the negative reaction to the "Black History Month incident" the day before. He advised them to keep a low profile, do their work. Grievant observed that the tension on the assembly line was such that most of those involved were unapproachable at that time. She had an especially close friendship with Bias, in whom she confided, that the incident was a joke. Bias responded that the joke had gone too far and had gotten way out of hand. Grievant acknowledged this fact and stated that she meant no disrespect to anybody and regretted the trouble she had caused. She also apologized to Bias, who accepted her apology. Grievant testified she would have apologized to the other individuals but had been told not to speak to them.

Miller and Dignan reported the matter to their supervisor, Chester Owens. Owens sent an e-mail message to Honeywell managers Donna Bistodeau, Terrance Anderson, Timothy Jasinski, Terri Skrien, and Michael Briggs, stating:

> I was informally informed of an incident that occurred on second shift, Monday, March 6, 2006. Two 2nd shift operators, Deanne [sic] Miller and Sandy Dignan, informed me that one 2nd shift operator, Nell Hooker received a joke text message on her cell phone telling her "in honor of black history month to slap five white people." In reaction to this text message Nell Hooker and Denise Glass (both African Americans) went around and playfully slapped white folks.

From there, the matter worked itself up Honeywell's chain of command. Honeywell officials told Grievant not to talk to anybody regarding the incident.

The incident was referred to Terry Skrien, Human Resources Representative, who investigated. Skrien interviewed all seven of the individuals who were involved. According to the Employer's summary of Grievant's interview, she admitted "playfully" slapping several coworkers and explained that she was "just playing around." Based on her investigation, Skrien concluded that Hooker and Grievant received the text message. "In honor of Black History

Month, slap five white people;" that Hooker "slapped" Miller; and that Glass "slapped" Yarke, Miller, Nygard, Sjodin, and Bias. She further concluded that Hooker and Grievant "didn't divulge information" from the incident during their interviews. Skrien recommended "disciplinary action" against both Hooker and Grievant, without specifying what discipline to be imposed. She recommended that everyone involved be required to take the Respect in the Workplace training "at a minimum."

On March 15, 2006, Grievant was terminated from her employment at Honeywell. The termination letters stated, "This discharge is based upon your violation of the following rules and policies" and it listed and quoted Honeywell's Code of Conduct, and Workplace Harassment Policy, as well as a disciplinary policy that prohibits "Deliberate promotion of discord or unrest, committing an act of violence, and giving false testimony during the investigation."

Local 1145 presented a Grievance to Honeywell, protesting Grievant's termination on March 15, 2006. A Step 2 meeting was held on March 26, 2006 and the Employer stood by its termination in its response to the hearing, dated April 18, 2006. The Union moved the matter to Step 3 on March 29, 2006. Unable to resolve the matter at Step 3, the Union moved the matter to arbitration.

POSITION OF THE COMPANY

The discharge of Grievant should be upheld because she committed an act of racial harassment against five white coworkers and then lied about the incident in the subsequent investigation.

Grievant admitted during her testimony to violating Company policies against racial harassment. The Company's Code of Conduct provides, "The Company prohibits all forms of harassment of employees by fellow employees…this includes any demeaning, insulting, embarrassing or intimidating behavior directed at any employee related to…race." The Company's Harassment Policy states, "At Honeywell, we believe that our employees should be treated with respect and dignity. Therefore, we will not tolerate inappropriate workplace conduct, including discriminatory harassment based on race…" The Company's Discipline Policy specifically calls "deliberate promotion of discord and unrest" a termination offense.

Further, the grievance should be denied and the discharge upheld because Grievant lied and withheld information during the Company's investigation. "Even in the absence of explicit work rules, employers are owed trust and honesty from their employees." Norman Brand, Discipline and Discharge in Arbitration, p. 343 (1998).

The Company's Discipline Policy specifically identifies "Giving false testimony" as a termination offense. Grievant admitted during her testimony at the hearing that she lied during both investigation interviews conducted by Bell. She lied about her involvement and several aspects of the incident which include: the number of people she slapped, the reason she slapped people, about text messaging at work and about her awareness of the text message. She stated

that the two coworkers she did slap were simply, "playing around." In essence, Grievant admitted that she lied in an attempt to minimize her involvement and avoid discipline.

Grievant knowingly and deliberately withheld information that was material to the Company's investigation. If she had simply told the truth, no investigation would have been necessary. Instead, Bell and others spent many hours and company resources to determine what had happened. Further, the time delay due to the investigation put the slapped employees in an uncomfortable position in the workplace. Grievant has breached the employer/employee relationship and has damaged that relationship to the point the Company can no longer trust her.

Having determined that Grievant committed racial harassment and then lied during the investigation, the next step is to determine if the level of discipline is appropriate.

The discharge of Grievant was not excessive, unreasonable, or an abuse of management discretion. She engaged in racial harassment, by slapping five coworkers based on a racially driven text message. She then lied about what she had done during the Company investigation. Either of these offenses calls for termination; both together clearly justify the Company's discharge.

The Company and the Union have had arbitrations concerning matters similar to the present case. In an award similar to the instant matter, an employee was discharged for striking another employee in the face with an open hand. Honeywell v. Teamsters Local 1145, C-184 (1984)(Christenson, Arb.). No injury was suffered by the victim and the employee claimed the victim gave him the "finger" and he merely pushed the victim's hand away. When he did so, he may have touched the victim's face with his hand. Id. The Arbitrator upheld the discharge writing, "The record supports the conclusion that [the employee] committed the offense with which he is charged." He admits that his hand made contact with [the victim's] face."

The Company and the Uinon have had arbitrations in the past regarding lying during an investigation. In a 1987 award, Arbitrator Christenson dealt with an employee who lied during a Compnay investigation. Honeywell v. Teamsters Local 1145, C-391 (1987)(Christenson, Arb.). The employee gave false information about seeing a doctor when asked questions during an investigation. In upholding the discharge, the Arbitrator wrote, "The answers [the employee] gave were established to be false and certainly not immaterial." "The universal rule is that false answers are just cause for discharge."

Like the 1984 case, Grievant admits she committed the offense of slapping her co-workers in response to the racial text message. Like the 1987 case, Grievant gave answers during the investigation that were false and certainly not immaterial. In the earlier cases, the arbitrator dealt with only one offense and uphgeld the discharge. Here, discharge is the appropriate penalty as Grievant committed both offenses.

Grievant showed no signs of remorse after the event. She told Priscilla Bias that her actions were "just a joke" and she never apologized to any of the employees she slapped. Further, she lied during Bell's investigation, not just once, but twice. The strongest evidence of lack of remorse over the incident is the filing of a grievance over the Company's investigation,

accusing the Company of harassing her by investigating what she had done. Instead of showing any remorse for her actions, she tried to deflect her own guilt onto the Company for responding to the complaints of her coworkers. This action alone demonstrates the Grievant's lack of ownership and accountability for her personal actions in this matter.

According to Grievant's testimony, she claimed that she was told by her supervisor not to discuss the issue with anyone. However, she also testified that she failed to follow the direction as she spoke with Bias regarding her incident. She never mentioned an apology during that time. Additionally, she was not immediately advised to stay quiet about the issue until March 8th, two days after the incident took place. This afforded Grievant time to apologize to her co-workers and express any remorse. The desire to apologize to co-workers that she expressed at the hearing was never brought up to the supervisors who discharged her, nor was it brought up during the grievance process.

Rather than express remorse, Grievant destroyed relationships and even friendships that she had formed over the years with her co-workers. The Company was left to deal with the fallout that resulted, she caused her coworkers tension and anxiety by her callous, racial acts. In fact, the Company is still dealing with the issues Grievant caused as her co-workers continue to express their fear and distrust of her and seek accommodations from the Company.

POSITION OF THE UNION

Just cause is the standard that applies to Honeywell's termination of Grievant which requires a showing that termination was justified under the circumstances. There was no such showing. Rather, the facts surrounding the discharge viewed under the Agreement and in light of the just cause principle shows no justification for discharge.

An employer seeking to discharge an employee for misconduct assumes the burden of proof in two areas: (1) whether the employee committed a dischargeable offense; and (2) whether the act, if proven, justifies termination. A heavy burden was clearly on the Employer to support its action in this case. It had the burden of showing the Grievant committed a dischargeable offense. There was no evidence whatsoever of work-related misconduct to support a just cause termination or any discipline at all.

Termination from employment is, to use a common expression, "capital punishment" for an employee, as it involves his or her livelihood, reputation, employee rights, and future job opportunities.

The Employer has asserted that the Grievant was terminated in this case for violating work rules. Any work rule violation, such as the one asserted by Honeywell, must be examined through the lens of a just cause analysis pursuant to the standard set forth in Article XIX of the CBA, to determine whether termination was appropriate.

Although just cause has no universally accepted definition among arbitrators or the judiciary, it is common in labor law to determine whether just cause existed in particular circumstances by applying "the Seven Tests":

1. Is the rule under which the grievant was discharged reasonably related to the safe and efficient conduct of the business?
2. Was the rule clearly expressed and effectively promulgated?
3. Did the company conduct a fair investigation into the facts?
4. Do the facts establish the guilt of the grievant?
5. Does the penalty of discharge fit the proven offense?
6. Has the grievant been afforded even-handed disciplinary treatment?
7. Has the employer either condoned such behavior in the past or otherwise entrapped the grievant into believing such conduct was acceptable?

Application of the Seven Tests to this case makes apparent that Honeywell did not have just cause to terminate Grievant. Although the Employer is certainly in its right to prohibit violence or racial harassment, the actions of the Grievant did not rise to the level of these offenses. The facts do not establish that Grievant committed racial harassment, and there is evidence that Honeywell has not applied these workplace policies evenhandedly. While the Grievant's actions may have been ill-considered, they were an isolated incident, constituting little more than a poor joke, committed without or harassing intent. Rather, as was the case in prior disciplinary actions involving similar facts, even if Grievant's conduct was proven the penalty imposed should be reduced to a lesser level of demerit.

The Union does not dispute that the Employer has the authority, and in fact, the duty to address incidents of racial harassment. However, the mere involvement of race in an incident does not transform a harmless joke into racial harassment.

A survey of cases involving allegations of racial harassment reveals that the appropriate handling of such cases involves an assessment of several factors, including the degree of animus implied by the action, the level of violence if any, the impact the actions had on the target of the action, and the history between those involved, including the Grievant's history of similar behavior and the employer's history of addressing the issue. When an incident involving race is coupled with a threat to do serious harm, or an actual attempt to do serious harm to victim, the incident calls for more serious treatment. Conversely, if the incident is isolated and impulsive, there is no history of similar behavior by the grievant, and the employer failed to address the conduct through rehabilitative steps, the facts tend to weigh in favor of mitigation.

The facts of Grievant's termination are clearly insufficient to establish just cause for discipline, much less termination. She has no history of committing racial harassment of coworkers. The Employer cannot claim that it had no choice but to terminate Grievant because lesser rehabilitative efforts had been attempted without success. The Employer chose no means of rehabilitation whatsoever in this case. The Grievant did not act based on a longstanding hostility or plan; instead, she acted impulsively in response to the suggestion of another. Given time to consider her behavior first, she probably would have recognized that this joke was in

poor humor. Unfortunately, she did not take the time to consider her action and proceeded with what she considered a playful joke with coworkers, many of whom she considered good friends.

The incident itself was neither violent nor racist. None of the five women who were touched or lightly tapped or slapped expressed fear or suggested that they were injured. None described the incident as violent. Most did not have any idea that the basis for the touching was a text message about slapping white people, but thought she was engaged in some sort of game of tag. Thus, the incident by no definition could be described as racial harassment. Her actions did not constitute racial harassment under Honeywell's own policies: it was not "demeaning, insulting, embarrassing or intimidating behavior directed at any employee related to…race."

Moreover, Grievant has expressed remorse and been honest about the incident. After the incident was over, she recognized the error or her act. She immediately regretted her joke, and apologized to Bias. She was unable to apologize immediately to some coworkers as she believed she was prohibited from speaking to them during the investigation.

The Employer has attempted to strengthen its case for termination by asserting that the Grievant was dishonest in the course of its investigation. Admittedly, she minimized the incident and left out the names of some of the employees involved. However, she substantially told the truth. She immediately admitted her role in the incident, did not deny that she touched her coworkers' faces, and she explained how she understood the incident to be a matter of a "joke gone wrong." There were minor differences in details which are to be expected from different witnesses to an incident. This cannot be the sort of "dishonesty" contemplated under the disciplinary policy to result in immediate termination.

When termination for racial harassment has been upheld in arbitration, the Grievant's conduct was egregious and even violent, the slurs were patently offensive and racially charged, and the Grievant was often responsible for a pattern of harassing conduct. Such actions are rightly proscribed by a workplace anti-harassment policy such as the policies Honeywell has in place. Such policies are not, however, put in place to prohibit the kind of relatively insignificant behavior for which the Grievant was charged.

The evidence presented at the hearing showed that Dignan, a white woman, was involved in an incident involving workers of differing races, but the Employer disciplined her much less severely. When asked about this incident in the course of the hearing, Dignan stated that the incident involved no more than using the term "Black" in place of "African American."

If the Arbitrator were to find that Grievant was guilty of some misconduct warranting discipline, the Arbitrator should modify the penalty, reinstating the Grievant with only a file notation, warning or suspension.

The well-established principle of just cause is expressly incorporated into the parties' Agreement. The Employer cannot simply dispense with just cause by adopting a set of negotiated rules and procedures unilaterally. When the evidence is reviewed to determine just cause in this case, it is clear that the Employer did not have just cause to terminate.

Alternative remedies to discharge were available but were not invoked by the Employer. Honeywell attempted no counseling or group discussions with the Grievant, or other rehabilitative measures. The Employer did not charge Grievant with a demerit level that would bring with it a corresponding warnings, note in the file, or even a suspension. Moreover, for several days after this incident, she worked without any problem. Grievant was given no opportunity to correct her behavior or to demonstrate that it would not happen again. The discharge seeks to punish, not to improve; it is vindictive, not corrective.

Grievant is ready, willing, and able to return to her position. The Grievant has proven herself over seven years to be a competent and useful member of Honeywell's work force, and there is no reason to doubt that Grievant's skills and competency will be utilized if reabsorbed into the workforce and that her quality of work will continue to be satisfactory.

Grievant has had seven years of tenure with a nearly unblemished record. Lengthy service for the Employer should operate in Grievant's favor when a discharge is reviewed through arbitration. This discharge focuses on only one incident in seven years of her good work at Honeywell. Years of service to any employer are deposits in a reservoir of good will from which an employee should be allowed to draw in times of needs. A single act, especially under the circumstances presented in this case, is insufficient grounds to ignore the lengthy tenure, loyalty, and work record of the Grievant.

DISCUSSION AND OPINION

In the arbitration of discharge cases involving any physical contact claimed to be harmful or unwelcome, it is common for the accuser to exaggerate the severity of the offense and for the accused to minimize the degree of harm. Usually, the truth lies somewhere between. So it is in this case at hand.

The Company's argument can be summarized concisely as follows: The Grievant slapped several of her coworkers because they were the first white persons near her when she responded to a text message advising "In celebration of Black History Month, slap the first five white people you meet." Her misconduct caused fear and resentment in the workplace resulting in substantial disruption in production including some loss of work time attributable to stress due to Grievant's actions.

The Union's version of the incident leading to the Grievant's termination from employment portrays her actions as merely a joke gone awry among a group of friendly coworkers who had often engaged in comparable pranks without any offense intended or perceived. To the extent the gentle taps she gave to her coworkers cheeks may have been misinterpreted, the Grievant has already shown remorse. In light of her prior unblemished employment record and lack of hostile intent, the penalty of discharge cannot be justified.

These conflicting versions of the incident here under review reveal that the core facts are not in dispute, rather it is how these facts should be characterized which will determine the

outcome of this case. The threshold question presented was whether the contact made by the Grievant to the coworkers faces should be described as a mild slap or a friendly tap.

This quibble is essentially irrelevant. What matters is that the Grievant's gesture to the faces of her coworkers was perceived by most of them as highly offensive. The pertinent question therefore is whether their reactions were reasonable or were they overreactions to a mere prank.

The answer to why those coworkers took such offense to the Grievant's actions has nothing to do with the fact that no physical discomfort was caused by her gesture. Rather, their resentment came from learning that they were the targets of the text message which had urged the Grievant to slap them "in celebration of Black History Month."

It was this information learned after the fact which turned those coworkers' bewilderment to anger and resentment. What needs to be stated in this regard is that those coworkers targeted for the symbolic slap learned that it was not only racially motivated but that the slap implied that they personally and individually harbored racist sentiments against African Americans. Their testimony at the hearing clearly revealed that those who were offended all had taken this meaning from the Grievant's actions.

The Grievant's explanation for such conduct – that she was "just playing around" – utterly fails to obscure or excuse its racial connotations. The same rationalization has been too often relied on in the past to diminish racial insults against African Americans. Demeaning racial stereotypes depicted in movies, TV and comic strips were too often defended as "harmless humor" when in fact informed people now recognize that such insensitive parodies were a particularly cruel form of racial insult.

The divisive racial content of the text message that prompted the Grievant's token slaps to her coworkers is undeniable. It should come as no surprise that the white women who were the targets of the mock slaps found no humor in the notion that it was somehow funny to be so ridiculed "In honor of Black History Month."

Honeywell has clearly expressed and effectively promulgated a Code of Conduct which specifically addresses racial harassment. That Code states, in relevant part:

> We Work in a Positive Environment
>
> Honeywell endeavors to provide all employees an environment that is conducive to conducting business and allows individuals to excel, be creative, take initiative, seek new ways to solve problems, generate opportunities and be accountable for their actions.
>
> **
>
> The Company prohibits all forms of harassment of employees by fellow employees, employees of outside contractors or visitors. This includes any demeaning, insulting, embarrassing or intimidating behavior directed at any employee related to gender, race, ethnicity, sexual orientation, physical or mental disability, age, pregnancy, religion, veteran status, national origin or any other legally protected status.

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> Failure to comply with any responsibilities established by this Code of Business Conduct may result in disciplinary action, up to and including termination, as appropriate.

The Company's Factory Human Resources Policies and Procedures cover the asserted charge against the Grievant, as follows:

> FOURTH DEGREE OFFENSES are defined as those acts or omissions of an intolerable nature which violate the commonly accepted or established rules of conduct, such as:
>
> **
>
> Deliberate promotion of discord or unrest.
>
> **
>
> Giving false testimony.

A single Fourth Degree Demerit calls for discharge.

Review of the record establishes that the Company has presented a prima facie case that the Grievant committed a dischargeable offense. This review therefore turns to the Union's affirmative defense. The threshold defense presented by the Union argues than the discharge penalty is unduly harsh in light of the lack of any serious harm to the Grievant's coworkers, the Company, or the work environment resulting from the Grievant's actions. The record facts show otherwise.

The coworkers who testified described a workplace environment that remains tense and anxious to the very present. Some of these witnesses described their personal resentment and fears which prompted certain employees who were involved to request such security measures from the Company as assignment of parking slots near the plant doorways and coverage of their cars by security cameras.

In the aftermath of the incident, one employee reported that she took time off work due to the resulting stress; another reported discord at home because her husband sought to have her report the incident to the police. Witnesses gave uncontroverted descriptions of coworkers being reduced to tears. The complaints to management which led to the subsequent investigation and discharge decision certainly reflected hurt and angry feelings from those offended by the Grievant's misconduct and particularly by the racial connotations of her symbolic slaps.

The Union contends further that the decision to discharge the Grievant failed to consider the mitigating circumstances of the seven years of relatively unblemished service she gave to Honeywell. Actually, Human Relations representative Terri Skrien testified that she and Jaime Bell reviewed the Grievant's total record in deciding to recommend the termination of her employment on the basis that the combination of the Grievant's misconduct in the slapping incident and lying about the facts in the investigation.

The Arbitrator lacks authority, even if so disposed, to instruct the decision makers that they should have given even greater consideration to long service mitigation than they already have. To do so would constitute an impermissible substitution of the Arbitrator's judgment for

that of management's. This is particularly true where nothing in the record suggests that the discharge decision in this case was arbitrary, discriminatory, or clearly unreasonable.

Finally, the Union argues that the Grievant was afforded disparate treatment as compared to that imposed on one of the adverse witnesses in this case who received a second demerit for using the term "black" instead of African American in conversation with Ms. Hooker. In its brief, the Union presented the argument as follows:

> Dignan had made a comment derogatory to black people to Hooker. Dignan was charged with a second demerit. The white woman who directed a racially charged comment toward her African American coworker suffered only a second demerit and a corresponding notation in her file, while the African American Grievant, whose actions were no more serious than Dignan's, was terminated. This constitutes disparate treatment, and thus violates the just cause principle.

This characterization of the grounds for the Union's disparate treatment defense falls wide of the mark. There was no evidence adduced that Ms. Dignan's supposed offense consisted of anything more than using the commonplace terms "black" rather than "African American" in the incident for which she was penalized. I note for the record at this point that the term "black" is routinely used by several members of my large multi-racial family in identifying their race. These include three grandchildren, two great grandchildren, two sons-in-law and four foster children.

I take arbitral notice that the designation "black" appears as common parlance devoid of negative connotations, among sources including a news reports, modern literature, census counts poetry, song lyrics, sociological and anthropological typologies and sports casts. Indeed, no criticism was expressed in this case by repeated references to Black History Month (as opposed to African American History Month).

In view of these realities, it makes no sense for the Union to characterize Ms. Dignan's use of the term black as "a racially charged comment" when it uses exactly the same terminology in its brief, i.e., "Dignan made a comment derogatory to black people." Inasmuch as Ms. Dignan's use of the term black people should be understood as non-derogatory, it follows that the Union's position utterly lacks merit when it argues that the Grievant suffered disparate treatment because her "actions were no more serious than Dignan's."

In sum, the evidence and arguments presented by the Company firmly establishes that the Grievant committed a serious violation of the Honeywell Code of Conduct prohibiting any form of racial harassment which, in this case, promoted substantial discord and unrest in the workplace. None of the Union's due process defenses suffice to extenuate the circumstances of her misconduct or to mitigate the discharge penalty.

This review ought not close without consideration of the second charge against the Grievant, that of lying to the investigators of the March 6, 2006 incident. This form of misconduct is specifically listed as a Fourth Degree Demerit offense, defined among "…acts of

an intolerable nature which violate the commonly accepted or established rules of conduct." As noted above, this level of demerit calls for discharge.

The Grievant admitted that she was untruthful during the investigation of the incident. The Union mischaracterizes the seriousness of her false responses to the investigators by describing the Grievant's deliberate misrepresentations as "minor differences in detail which are to be expected from different witnesses to the incident."

This line of defense ignores the fact that the Grievant told a provable lie about a material aspect of the incident when she denied knowing anything about the racist text message which prompted her offensive conduct towards her white co-workers. This patent untruth was no minor difference in details, as minimized in the Union's defense. Ms. Hooker in her own admission against interest disclosed that she had shared the text message with the Grievant.

The false testimony was substantially material to how management would judge her behavior because, absent the racial overtones, the Grievant's version of innocent playfulness on her part would have been more plausible. It stands as obvious, therefore, that she denied knowledge of the text massage for the express purpose of evading blame for a racially motivated action.

The Company asserts that it has consistently discharged employees found guilty of lying during conduct investigations and presented prior arbitration awards attesting to arbitral approval of such penalty. While the principle of stare decisis has generally been found inapplicable to the arbitration forum, broad agreement can be found among arbitrators that prior awards involving the same parties on a common subject matter should be accorded substantial deference.

The prior arbitration awards issued to these same parties sustaining discharges for falsifying testimony in disciplinary incidents deserve heavy persuasive weight, further, because they are well reasoned and effectively written. Nothing presented in the instant case warrants an exception from this established line of determination.

DECISION

Based on the foregoing findings and conclusions, the grievance is, hereby, denied.

2/19/2007
Date

John J. Flagler, Arbitrator